

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

DIANA VILLAVICENCIO,

Defendant-Appellant.

UNPUBLISHED

April 11, 2006

No. 259437

St. Joseph Circuit Court

LC No. 03-011726-FH

Before: Smolenski, P.J., and Owens and Donofrio

PER CURIAM.

Defendant was convicted by a jury of two counts of resisting or obstructing a police officer, MCL 750.81d(1), for which she was sentenced to twelve months' probation. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the evidence was insufficient to convict her of resisting and obstructing, and that the case should be remanded for entry of a judgment of conviction for disorderly conduct. We review de novo a claim of insufficient evidence but view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the defendant guilty beyond a reasonable doubt. We will not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *People v Fletcher*, 260 Mich App 531, 559, 561; 679 NW2d 127 (2004).

The evidence established that defendant went to the scene of her nephew's arrest, where approximately 40 to 50 people had gathered and at least six officers had responded. Defendant was upset, was yelling and using profanities, and repeatedly approached the police car in which her nephew was seated. She claimed that she could not get a response from officers regarding her nephew's condition.

Officers testified that they asked defendant to leave a number of times, that she twice left when he asked but came back a third time, and that she seemed to be directing comments to the crowd instead of the police, as if to incite the crowd. After defendant was told that she was under arrest she then backtracked towards her car. Defendant's daughter then grabbed defendant, saying "please don't take her to jail." When an officer attempted to separate the women, he was elbowed by defendant. Defendant then grabbed a bottle from the ground, which

she held by her side and refused to put down upon request. As the officer took out his baton, defendant circled back behind her car, and the officer sprayed defendant in the face with mace. She was then handcuffed while she continued to cuss and squirm.

MCL 750.81d(1) provides:

. . . . [A]n individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

“Obstruct” is defined to include “the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.” MCL 750.81d(7)(a).

Defendant did not interfere in her nephew’s arrest; however, the prosecution focused on defendant’s failure to comply with requests to leave, not the nephew’s arrest. Defendant asserts that her own altercation with police took place at her vehicle, indicating that she was in the process of obeying the commands that she leave the area. Further, she asserts that the prosecution failed to show that she knowingly failed to comply with a lawful demand. However, the officers’ testimony established that defendant was told to leave at least three times, and kept returning before she was advised that she was being arrested. That she went back to her own vehicle may have been some evidence that at that point she was complying with the officers’ commands. However, at that point she had already obstructed the officer in the performance of his duty by failing to comply with a lawful demand. The evidence showed that defendant elbowed an officer. This action was sufficient to establish the second count. Defendant’s additional actions were evidence of further obstruction, but not necessary for conviction of these two counts.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio